

STATE OF MICHIGAN
COURT OF APPEALS

THOMPSON'S BEAR LAKE LIMITED
PARTNERSHIP,

UNPUBLISHED
October 22, 2002

Petitioner-Appellant,

v

TOWNSHIP OF PLEASANTON,

No. 233544, 233545
Tax Tribunal
LC No. 00-265779, 00-272537

Respondent-Appellee.

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's decision approving an increase in the taxable value of petitioner's property. We reverse and remand.

Annual increases in the taxable value of real property are capped at five percent or the inflation rate, whichever is less, unless there is a transfer of ownership. 1963 Const, art 9, § 3; MCL 211.27a(2), (3). Transfers between common controlled entities are not considered transfers of ownership. MCL 211.27a(7)(l). The statute does not define commonly controlled entities. However, a state tax commission bulletin instructs that when determining whether a transfer of ownership occurred, "[a]n entity under common control is as defined in the Michigan Revenue Administrative Bulletin 1989-48." State Tax Commission Bulletin No. 16, "Transfers of Ownership," September 20, 1995.

This Court should give weight to administrative interpretations. *Ludington Service Corp v Acting Comm'r of Ins*, 444 Mich 481, 491; 511 NW2d 661, mod 444 Mich 1240 (1994). Although administrative interpretations are not binding and cannot defeat a statute's plain meaning, *Western Michigan University Bd of Control v State*, 455 Mich 531, 544; 565 NW2d 828 (1997), in the present case the interpretation is reasonable and likely what the Legislature intended.

In the present case, if the transferor was a partnership, as petitioner alleged, the transfer was between commonly controlled entities and the cap on taxable value applied. See Michigan Revenue Administrative Bulletin 1989-48, 2-3. Entities are under common control if (1) the same five or fewer persons own a controlling interest in each; and (2) "[t]aking into account the ownership of each such person only to the extent such ownership is identical with respect to each such entity" these persons also are in effective control of each entity. *Id.* Controlling interest in

a partnership is defined as eighty percent of the profits or capital. *Id.* at 2. Effective control of a partnership is defined as more than fifty percent of the profits or capital. *Id.* at 3.

The alleged general partnership and the limited partnership met both requirements regardless of whether the partners had equal shares in the general partnership or whether the shares were divided as petitioner claims. Further, although a person cannot remain a limited partner if he participates in the control of the business beyond certain rights, MCL 449.1303(a), controlling interest and effective control are defined by shares of profits or capital, not management control. Michigan Revenue Administrative Bulletin 1989-48, 2-3. Finally, it would be inconsistent with the Legislature's intent in enacting MCL 211.27a(7)(l) to hold that entities are not commonly controlled simply because one ceased to exist after the other was formed. When interpreting an ambiguous statute, this Court's goal must be to effect the Legislature's intent. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999).

Therefore, it would be error requiring reversal to find that the alleged general partnership and limited partnership were not commonly controlled. However, the tribunal instead stated, without explanation, that the transfer was from a sole proprietorship.

A sole proprietorship could be a commonly controlled entity; the statute lists some entity types but applies to "other legal entities" as well. MCL 211.27a(7)(l). According to the revenue bulletin, the entity under common control may be any person, as defined by MCL 208.6(1), including an individual. Michigan Revenue Administrative Bulletin 1989-48, 1. However, in the present case, a sole proprietorship owned by the father or son could not be a commonly controlled entity because neither person owned a controlling interest in the limited partnership. *Id.* at 2. Therefore, the Tax Tribunal finding that the transferor was instead one or more sole proprietorships was outcome determinative.

Petitioner argues that the assertion in the certified statement of facts that a "common law partnership" existed cannot be challenged on appeal. Respondent did not challenge the statement of facts in the tribunal as required by MCR 7.210(B)(2)(b). The present case is unusual because the alleged conflict is between the statement of facts and the tribunal referee's own opinion and judgment. However, the tribunal's findings must be based on competent, material, and substantial evidence, MCL 24.306; *Butcher v Dep't of Natural Resources*, 158 Mich App 704, 707; 405 NW2d 149 (1987); therefore, we cannot accept the tribunal's finding of a sole proprietorship if the evidence in the record does not support that finding.

A partnership exists if the persons intended to and did carry on a business for profit as co-owners. *Byker v Mannes*, 465 Mich 637, 652; 641 NW2d 210 (2002). The burden of establishing the existence of a partnership is on the party claiming the partnership. *Brown v Frankenmuth Mut Ins Co*, 187 Mich App 375, 381; 468 NW2d 243 (1991), and the burden is elevated when the persons are related, *Grosberg v Michigan National Bank Oakland*, 113 Mich App 610, 614; 318 NW2d 490 (1982). In the present case, it is possible petitioner did not meet that burden; however, that is difficult to determine from the limited record. It is possible as well that the tribunal erroneously believed the property could not be partnership property if held in the name of individual partners. See *McCormick v McCormick*, 342 Mich 525, 530; 70 NW2d 706 (1955); *Mathews v Wosek*, 44 Mich App 706, 714-715; 205 NW2d 813 (1973).

This case must be remanded for an explanation regarding the reasons for the tribunal's sole proprietorship finding. This explanation should also include a clarification regarding ownership of the property held jointly by husband and wife.¹

Petitioner also challenges on appeal the tribunal statement that petitioner has the burden of establishing its right to the tax cap beyond a reasonable doubt. The taxpayer has the burden of establishing tax exemptions, *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995), which includes provisions that decrease but do not completely eliminate a tax, *Auto-Owners Ins Co v Dep't of Treasury*, 226 Mich App 618, 621; 575 NW2d 770 (1997). Although the provision in the present case is not strictly a tax exemption, the Legislature indicated that the burden was on the party claiming commonly controlled entities, see MCL 211.27a(7)(l).

However, the tribunal erred when it described that burden as beyond a reasonable doubt. See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494; 644 NW2d 47 (2002); *Holland Home v Grand Rapids*, 219 Mich App 384, 394-395; 557 NW2d 118 (1996). The reasonable doubt standard applies only to parties claiming a new class of exemptions. *ProMed Healthcare, supra* at 494; *Holland Home, supra* at 394-395. Petitioner was required only to establish by a preponderance of the evidence that the transfer was between commonly controlled entities. *ProMed Healthcare, supra* at 494.

Reversed and remanded for further findings regarding the sole proprietorship issue and for application of the appropriate standard regarding burden of proof. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh

¹ A partnership may consist of a husband and wife. MCL 449.6(1).